



SOWELL GRAY STEPP & LAFFITTE, LLC  
ATTORNEYS AND COUNSELORS AT LAW

November 12, 2003

VIA HAND DELIVERY

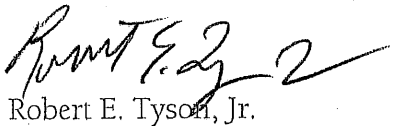
The Honorable Bruce Duke  
Acting Executive Director  
Public Service Commission of South Carolina  
101 Executive Center Drive, Suite 100  
Columbia, South Carolina 29210

Re: Docket Nos. 2003-326-C and 2003-327-C  
SGS&L File No. 5671/1500

Dear Mr. Duke:

Enclosed for filing, please find the original and 17 copies of CompSouth's Motion to Modify Proposed Procedural Schedule in the referenced Dockets. Please stamp the extra copies provided as proof of filing and return them to our courier.

Sincerely,



Robert E. Tyson, Jr.

Robert E. Tyson, Jr.  
rtyson@sowell.com

/alh

Enclosures

cc: F. David Butler, General Counsel  
Florence P. Belser, Executive Assistant to Commissioners  
Elliot F. Elam, Jr., Esquire  
John J. Pringle, Jr., Esquire  
Patrick W. Turner, Esquire

1310 Gadsden Street  
Post Office Box 11449  
Columbia, SC 29211  
  
PHONE 803.929.1400  
FACSIMILE 803.929.0300  
WEBSITE [www.sowell.com](http://www.sowell.com)

**BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA**

**Docket No. 2003-0327-C**

**In re: Continued Availability of )  
Unbundled High Capacity Loops at )  
Certain Locations and Unbundled )  
High Capacity Transport on Certain )  
Routes Pursuant to the Federal )  
Communication Commission's Triennial )  
Review Order )**

---

**MOTION TO MODIFY  
PROPOSED PROCEDURAL  
SCHEDULE**

RECEIVED  
2003 NOV 13 PM 3:35  
SOUTH CAROLINA  
PUBLIC SERVICE  
COMMISSION

Competitive Carriers of the South, Inc. ("CompSouth")<sup>1</sup>, by its attorneys, hereby moves the South Carolina Public Service Commission ("Commission") for a modification of the proposed procedural schedule set forth in the above-captioned docket ("Motion"). CompSouth proposes that the Commission require each incumbent local exchange carrier ("ILEC"), including, but *not limited to*, BellSouth Telecommunications, Inc. ("BellSouth") and Verizon South Carolina Inc., ("Verizon"), to make a Route Identification filing identifying the loop routes and transport routes where the ILEC intends to challenge the FCC finding of impairment for DS1, DS3 and dark fiber loops and transport. CompSouth requests the Route Identification filing be made by February 16, 2004. This filing would not cause any delay in the remainder of the procedural schedule. As discussed herein, granting this Motion will conserve resources of the Commission and the parties, will not prejudice any party involved in the proceeding, and will promote the public interest.

---

<sup>1</sup> The members of CompSouth include: Access Integrated Networks, Inc., Access Point Inc., AT&T, Birch Telecom, Cinergy Communications Company, Covad Communications Company, IDS Telecom LLC, ITC/DeltaCom, KMC Telecom, LecStar Telecom, Inc., MCI, Momentum Business Solutions, Network Telephone Corp., NewSouth Communications Corp., NuVox Communications Inc., Talk America Inc., Xspedius Communications, and Z-Tel Communications.

In support of its Motion, CompSouth provides the following:

**I. DISCUSSION**

On November 7, 2003, the Commission issued Order No. 2003-67, an Order Setting Hearing Dates and Opening Dockets<sup>2</sup>, thereby starting this proceeding to conduct the impairment inquiries described in the FCC's Triennial Review Order,<sup>3</sup> including the inquiry to determine if route-specific evidence demonstrates non-impairment on any loop or transport routes in the state. On September 10, 2003, CompSouth and BellSouth sent the Commission a joint proposal for the conduct of discovery and the schedule of the nine month proceedings within the nine-state BellSouth territory. In this letter, CompSouth and BellSouth acknowledged that, with respect to the loop and transport aspect of the investigation, "the issues raised by the High Capacity Loop Transport portion of the case will be much more fact specific, dealing with individual route and location specific facilities." Joint Letter at 2. The parties stated that they would continue to seek areas of agreement to conduct this proceeding most efficiently. Although they have subsequently agreed upon an initial set of discovery requests to be submitted to competitive local exchange carriers in the state, they have not reached additional agreement on procedural issues. Subsequently, the PSC at its weekly meeting on October 7, 2003 approved the hearing date, but retained the right to amend the procedural schedule.

In Commission Order No. 2003-67, the Commission tentatively approved the schedule jointly submitted by BellSouth and CompSouth for the filing of testimony,

---

<sup>2</sup> Order Setting Hearing Dates and Opening Dockets, Order No. 2003-67, South Carolina Public Service Commission Docket No. 2003-0327-C (November 7, 2003).

<sup>3</sup> Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338; Implementation of the Telecommunications Act of 1996, CC Docket No. 96-98; Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, FCC 03-36 (rel. August 21, 2003) ("Triennial Review Order").

exhibits, and briefs. Per the Commissioner's concerns, the Order further granted the Commission the right to revisit the schedule upon request by a party to the proceeding. On November 12, 2003, CompSouth intervened in this docket thereby making it a party of record for this proceeding. Thus, CompSouth requests the Commission modify its tentatively approved schedule with respect to the above-described route identification filings.

CompSouth now submits this proposal in order to further streamline the procedural schedule for addressing challenges to the finding of impairment with respect to loops and transport. Specifically, in order to ensure that this proceeding is focused upon the relevant facts and issues, CompSouth proposes that the Commission modify the current procedural schedule to require each incumbent LEC to identify the specific customer locations and routes for which it intends to challenge the FCC's finding of impairment (the "Route Identification filing"). This Route Identification filing should identify (i) the specific customer locations (for loops) and the specific central office routes (for transport) where the ILEC intends to challenge the impairment finding, (ii) each trigger (wholesale or self-provisioning) alleged to be satisfied, (iii) the capacity levels (DS1, DS3 or dark fiber) for which the ILEC alleges the triggers are satisfied and (iv) the facilities-based carriers relied upon as satisfying the triggers. In addition, if the ILEC intends to present a case on "potential deployment," it should state this in the Route Identification filing, identify the routes for which it intends to make such a showing and describe the showing the ILEC intends to make.<sup>4</sup>

---

<sup>4</sup> See Triennial Review Order, ¶¶ 335, 410. CompSouth believes that the "potential deployment" analysis is most appropriately addressed in a subsequent proceeding, after the nine month trigger analysis is completed. Nevertheless, if the ILEC intends to pursue this argument, it should say so

**A. MODIFYING THE PROCEDURAL SCHEDULE WILL PRESERVE SCARCE COMMISSION RESOURCES**

The outcome of the loop and transport inquiry is critically important to facilities-based competition in South Carolina, but the inquiry is narrowly focused. The FCC made nationwide findings of impairment with respect to high capacity loops and transport, and adopted a pair of triggers to identify specific routes where competitors are not impaired without access to loops or transport as an unbundled network element. In applying these triggers, the Commission need only consider those routes where record evidence has been presented to demonstrate non-impairment.<sup>5</sup>

The most efficient way to focus this proceeding on the relevant routes is to require the ILEC to identify where it will challenge impairment. Modifying the procedural schedule to require this identification will preserve scarce Commission (and party) resources. First, as the FCC intended, the filing will enable the Commission to narrow the scope of the proceeding to only those customer locations<sup>6</sup> and wire center to wire center routes<sup>7</sup> for which a case will be presented. There are literally thousands of transport routes between ILEC central offices in the state and hundreds of thousands of customer locations (*i.e.*, loop routes) that could be analyzed. Based on the available information, it is likely that only a small portion of these routes will even potentially satisfy the FCC triggers. For example, data submitted by the RBOCs to the FCC – which was not subject to discovery or cross examination – indicated that only 13% of BOC

---

now, so that the schedule may be modified to accommodate the different issues that the analysis will raise.

<sup>5</sup> Triennial Review Order, ¶¶ 339, 417.

<sup>6</sup> For high capacity loops, the FCC has indicated that rebutting the presumption of impairment requires analysis on a “customer-by-customer location basis.” Triennial Review Order at ¶ 328.

<sup>7</sup> A “route” has been defined as “a connection between wire center or switch ‘A’ and wire center or switch ‘Z.’” Triennial Review Order at ¶ 401.

central offices had even one facilities-based carrier collocated in the central office.<sup>8</sup> An even smaller percentage of the pairs of central offices are likely to have two collocated carriers on each end of the transport route. Moreover, it is extremely unlikely that many customer locations would support the deployment and use of DS3s from two unaffiliated competitive carriers, in addition to the ILEC loops. It should be a goal of this proceeding to narrow the inquiry to these few routes as soon as is possible. Indeed, it would be extremely wasteful for the Commission to muddle through vast amounts of information concerning every potential transport route or customer location in the state when the overwhelming majority of that information ultimately will prove to be irrelevant. Not only would such an effort be difficult to conduct, but also even undertaking the review could threaten the Commission's ability to complete the loop and transport inquiry within the tight nine month time frame established by the FCC.

Second, a narrowing of the inquiry would promote a proper application of the FCC triggers. The trigger inquiry is not a mere counting exercise. Rather, the inquiry requires the objective consideration of route-specific evidence that addresses real-world operational conditions on the route (*e.g.*, Is the carrier "operationally ready" to provide wholesale service? May competitors access the wholesale provider's facilities through reasonable and non-discriminatory cross connects? Does the "self-provisioner" have access to the entire customer premises, including all units in a building or campus?). Knowing which of the specific triggers the incumbent LEC intends to rely upon and which carriers the ILEC contends operate on the route using their own facilities are keys to development of the record that is needed to conduct this inquiry. With a Route

---

<sup>8</sup> Triennial Review Order, n. 1198.

Identification filing, parties to this proceeding may focus their efforts on the specific routes in issue and may present data and testimony relevant to the operation of the carriers on the route. This information will enable the Commission to consider a more complete record with respect to the relevant customer locations and transport routes.

**B. MODIFYING THE PROCEDURAL SCHEDULE WILL NOT PREJUDICE ANY PARTY INVOLVED IN THE PROCEEDING**

Requiring a Route Identification filing will not prejudice any of the parties involved in this proceeding. The CompSouth companies and BellSouth share a common goal of providing a fair opportunity for all parties to present testimony and to cross examine evidence relied upon by other parties in the case. Toward this end, CompSouth and BellSouth already have agreed on initial discovery to CLECs that will elicit information needed to narrow the range of potential routes in issue in this proceeding.<sup>9</sup> No prejudice will be caused by asking the ILEC to identify, based on the information it has in its possession (including responses to the initial discovery requests), the routes for which it intends to bring a case and to provide the evidence upon which it intends to rely. To the contrary, parties would benefit from such production as it would effectively narrow the scope of the investigation, allowing parties to focus solely on the specific routes and customer locations in dispute.

**C. MODIFYING THE PROCEDURAL SCHEDULE IS IN THE PUBLIC INTEREST**

A Route Identification filing also is in the public interest. By requiring that such information be compiled and produced, the Commission, as stated above, will be able to narrow the scope of the investigation to only those specific routes or customer locations, thus allocating resources in the most efficient and effective manner.

---

<sup>9</sup> BellSouth already has propounded this discovery upon CLECs in Florida, Tennessee, Louisiana, and Alabama.

Numerous other state commissions have established this requirement that the incumbent LEC provide what is, in essence, a *prima facie* case in their Triennial Review Order proceedings. For example, the Tennessee Regulatory Authority is requiring the incumbent LECs involved in that proceeding to identify, by December 10, "the specific routes and customer locations for which the company intends to undertake rebuttal of the presumption of impairment" before direct testimony is required.<sup>10</sup> The Massachusetts Department of Telecommunications and Energy has ordered Verizon to make an initial filing (by November 13) that "include[s] identification of loop locations, transport routes and switching markets in which Verizon is contesting FCC determination of impairment (including economic and operational impairment)."<sup>11</sup> Verizon described this filing in a letter to the D.T.E. as a presentation of its "complete case" on the issues.<sup>12</sup> Similarly, the Colorado Public Utilities Commission has ordered Qwest to file (by November 6) a "Notice of Scope of Docket" that identifies, *inter alia*, the loop locations and transport routes where Qwest intends to challenge the FCC's finding of impairment.<sup>13</sup>

In other instances, state commissions have ordered the incumbent LEC to present its direct case several weeks before CLECs present their responses. For example, the

---

<sup>10</sup> Implementation of the Federal Communications Commission's Triennial Review Order (Nine Month Proceeding), Order Establishing Procedural Schedule, Docket No. 03-00527, issued October 27, 2003. BellSouth's Route Identification filing in Tennessee is due on December 10.

<sup>11</sup> Proceeding by the Department of Telecommunications and Energy on its own Motion to Implement the Requirements of the Federal Communications Commission's Triennial Review Order Regarding Switching for Mass Market Customers, Procedural Order, D.T.E. 03-60, issued September 25, 2003.

<sup>12</sup> See Letter from Bruce Beausejour, Vice President and General Counsel – New England, to Mary L. Cottrell, Secretary, MA DTE, at 2 (MA DTE Docket 03-60, filed Oct. 3, 2003) (stating that "the Company [will] present a complete case with supporting data and testimony that fully supports its claims that impairment does not exist for particular loop locations, transport routes, and switching markets").

<sup>13</sup> Regarding the Unbundling Obligations of Incumbent Local Exchange Carriers Pursuant to the Triennial Review Order – Initial Commission Review, Order Opening Docket and Establishing Procedural Requirements, CO PUC Docket No. 03I-478T (adopted October 16, 2003).



District of Columbia Public Service Commission has ordered incumbent LEC testimony in early December, six weeks before CLECs are to respond to that testimony.<sup>14</sup> The New Jersey Board of Public Utilities has issued a similar order in its Triennial Review Order proceeding.<sup>15</sup>

What these Commission actions have in common is recognition that early identification by the ILEC of its *prima facie* case is both desirable and possible. As these other state commissions have done, this Commission should require each incumbent LEC to identify the customer locations and routes upon which it seeks to rebut the FCC's presumption of impairment prior to the submission of direct testimony in this proceeding.

## II. CONCLUSION

For the foregoing reasons, CompSouth respectfully requests that the Commission grant this Motion to Modify the proposed Procedural Schedule proposed by BellSouth and CompSouth, and require each incumbent LEC subject to Section 25(c)(3)'s unbundling requirement to make a Route Identification filing by February 16, 2004, prior to the submission of testimony in this proceeding.

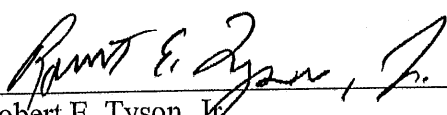
---

<sup>14</sup> Formal Case No. 1024. In the Matter of the Implementation of the Triennial Review Order in the District of Columbia, Order No. 12958, issued October 24, 2003. CLECs also will be provided an opportunity for additional discovery after the ILEC files its direct testimony. *Id.*

<sup>15</sup> In the Matter of the Implementation of the Federal Communications Commission's Triennial Review Order, Pre-Hearing Order, Docket No. TO03090705, issued October 22, 2003.

Respectfully submitted,

By:

  
Robert E. Tyson, Jr.  
SOWELL GRAY STEPP & LAFFITTE, LLC  
Post Office Box 11449  
Columbia, South Carolina 29211  
(803) 929-1400

ATTORNEYS FOR COMPETITIVE CARRIERS  
OF THE SOUTH, INC.

Columbia, South Carolina

November 13, 2003

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

**CERTIFICATE OF SERVICE**

I, the undersigned employee of the law offices of Sowell Gray Stepp & Laffitte, LLC, counsel for **Competitive Carriers of the South, Inc.** do hereby certify that I have served counsel in this action, as identified below, with a copy of the document(s) hereinbelow specified by first class mail, postage pre-paid:

**Pleadings:**

CompSouth's Motion to Modify Proposed Procedural Schedule

**Counsel Served:**

F. David Butler, Esquire  
General Counsel  
Public Service Commission of S.C.  
101 Executive Center Drive  
Columbia, SC 29210

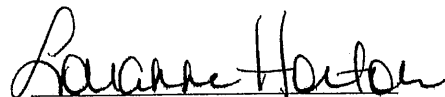
Florence P. Belser, Esquire  
Executive Assistant to Commissioners  
Public Service Commission of S.C.  
101 Executive Center Drive  
Columbia, SC 29210

Elliot F. Elam, Jr., Esquire  
SC Department of Consumer Affairs  
PO Box 5757  
Columbia, SC 29250

John J. Pringle, Jr., Esquire  
Ellis Lawhorn & Sims, PA  
PO Box 2285  
Columbia, SC 29202

Patrick W. Turner, Esquire  
BellSouth Telecommunications, Inc.  
1600 Williams Street  
Suite 5200  
Columbia, SC 29201

RECEIVED  
NOV 13 PM 3:36  
SC PUBLIC SERVICE  
COMMISSION

  
Louanne Horton

11-13, 2003